

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

THOMAS J. ELBERTY,

Plaintiff,

v.

A&D DATA CORP., et al.

Defendants.

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CIVIL ACTION NO. 08-715 (MLC)

ORDER & JUDGMENT

THE PLAINTIFF, Thomas J. Elberty, having moved for an entry of default against defendants A&D Data Corp., Howell Wood, David Wood, and Arthur Wood for failure to plead (dkt. entry no. 9); and the Clerk of the Court having entered default against all defendants on July 30, 2008, see Fed.R.Civ.P. 55(a); and, upon plaintiff's request, the Magistrate Judge having conducted a proof hearing pursuant to Federal Rule of Civil Procedure ("Rule") 55(b)(2) to determine the amount of damages owed to him by defendants A&D Data Corp., David Wood, and Arthur Wood (see dkt. entry no. 12, R&R);¹ and the Magistrate Judge recommending, pursuant to Rule 72(b), Local Civil Rule 72.1(c)(2), and 28 U.S.C. § 636(b)(1)(B), that defendant A&D Data Corp, and defendants David Wood and Arthur Wood in their personal capacity, be jointly and severally liable for a judgment in the amount of \$264,000 ("2-6-09 R&R") (R&R at 6); and

¹ Plaintiff did not request that judgment be entered against defendant Howell Wood because of a pending bankruptcy petition defendant Howell Wood had filed. (See R&R at 4 n.1.)

IT APPEARING that pursuant to Rule 72(b), Local Civil Rule 72.1(c)(2), and 28 U.S.C. § 636(b)(1)(C), within 10 days of the service of the magistrate judge's disposition, any party to the action may file specific written objections to a magistrate judge's proposed findings and recommendations; and it appearing that the time for filing objections to the 2-6-09 R&R has expired, and no objections to the 2-6-09 R&R have been filed; and

THE COURT finding that it agrees with the Magistrate Judge's findings and recommendations in the 2-6-09 R&R; and the Court further finding that defendants' failure to appear in this action and defend against plaintiff's claims warrants entry of judgment by default pursuant to Rule 55(b)(2); and the Court being satisfied that plaintiff has demonstrated he is owed (1)(a) \$52,500 in salary from July 1, 2007, through September 30, 2007, (b) \$1,500 in monthly car allowance for July 2007 through September 2007, and (c) \$210,000 in severance compensation for termination without cause, and (2) \$264,000 in total (see R&R at 6); and for good cause appearing;

IT IS THEREFORE on this 23rd day of June, 2009, **ORDERED** that the Report and Recommendation of the Magistrate Judge, filed on February 6, 2009, recommending that (1) judgment be entered in the amount of \$264,000 against A&D Data Corp., and David Wood and Arthur Wood in their personal capacity, and (2) A&D Data Corp., David Wood, and Arthur Wood be jointly and severally liable to plaintiff for \$264,000 (dkt. entry no. 12) is hereby **ADOPTED** as the findings of fact and conclusions of law of this Court; and

IT IS FURTHER ORDERED AND ADJUDGED that **JUDGMENT IS ENTERED** in favor of plaintiff, Thomas J. Elberty, and against defendants A&D Data Corp., David Wood, and Arthur Wood in the amount of \$264,000; and

IT IS FURTHER ADJUDGED that defendants A&D Data Corp., David Wood, and Arthur Wood be jointly and severally liable to plaintiff for \$264,000, and that David Wood and Arthur Wood are personally liable for this amount; and

IT IS FURTHER ADJUDGED that the Judgment will bear interest at the judgment rate from the date of entry of judgment until it is paid; and

IT IS FURTHER ORDERED that the Clerk of the Court designate this action as **CLOSED**.

s/ Mary L. Cooper
MARY L. COOPER
United States District Judge